Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84

REPLY COMMENTS OF CENTURYLINK

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July 17, 2017

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EXECUTIVE SUMMARY

With this set of filings, the formal pleading cycles in this docket are now complete. Given the resulting record, the Commission should take the following steps with regard to its pole attachment, copper retirement, and service discontinuance rules.

Pole Attachments

CenturyLink supports strong Commission action to expedite deployment of advanced telecommunications in rural America where the need remains great. The record before the Commission shows that, in rural areas, public power providers control millions of poles necessary to the deployment of advanced services. With their control over these essential facilities (and sometimes the public right-of-way), these entities have seen fit to raise rents and demand unfavorable contracts from CenturyLink and other providers. At the same time, public power providers are increasing their entry into the advanced services market, making many of their demands not only unfair, but also anticompetitive. As steward of the public funds deployed via the Connect America Fund, as well as pursuant to its power bestowed by federal law, including 47 U.S.C. § 253, the Commission must find ways to remedy these issues.

Outside of rural areas, however, CenturyLink finds little need for any considerable Commission revision to existing, workable pole attachment regulations. The record before the Commission provides no evidence that competition is suffering in urban and suburban areas due to delays in the pole attachment process. Rather, a new wave of competitive entrants simply prefers timelines and processes that are faster. Those proposals, however, show themselves to raise more issues than they solve by being unworkable in the field and by raising a host of irresolvable legal concerns. Still, CenturyLink supports minor improvements to the Commission's rules. For example, CenturyLink supports narrowing of parts of the make-ready process, and allowing parties to consider adopting best practices to free-up attaching entities to perform some work earlier in the process. Finally, CenturyLink also supports an expedited complaint process before the Commission, which will give parties some predictability in the process, and afford the Commission an opportunity to decide many unique issues on a case-by-case basis and not via additional rules.

Copper Retirement

Over time, ILECs have gradually replaced copper facilities with fiber, enabling faster, more capable services. The copper retirement rules adopted in the *2015 Technology Transition Order* inhibited this progression by significantly expanding the scope of that process and the time required to fulfill it. The Commission now has the opportunity to remove this regulatory speed bump by returning to its pre-2015 copper retirement procedures, with certain modifications. In particular, the Commission should repeal Sections 51.332 and 51.325(c). These changes will enable ILECs to upgrade their networks without detrimental impact to those using and being served by those networks.

Service Discontinuance

The Commission should streamline and update its Section 214 discontinuance rules to recognize that most customers have already migrated away from traditional TDM services, leaving behind legacy networks and services that are increasingly underutilized and obsolete. This widespread and voluntarily transition to next-generation wireline and wireless services provides all the evidence needed that customers view these services as comparable substitutes.

The Commission therefore can and should adopt streamlined procedures for applications to discontinue legacy services that rely principally on a certification that affected customers have been given proper notice of the proposed discontinuance and that each of those customers has access to at least one comparable service adopted by a substantial portion of the public. The Commission should also adopt its other proposals to streamline the Section 214 discontinuance process, including shortened timeframes for "grandfathered" services, a notice-based process for services with no customers, and reversal of the Commission's conclusion that a carrier seeking to discontinue a service must consider the impact of that discontinuance on its carrier-customers' end users. Finally, the Commission should abandon its misguided "functional test" standard for determining when Section 214(a) applies. To the extent the Commission is concerned about the detrimental impacts of the IP migration claimed by certain commenters, it should address those concerns through rules applicable to all providers, rather than carrier-specific conditions that delay this pivotal transition.

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CenturyLink hereby files its Reply Comments in response to the Commission's Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment seeking to accelerate wireline broadband deployment by removing barriers to infrastructure investment.[1]

DISCUSSION

I. POLE ATTACHMENT REFORMS SHOULD FOCUS ON RURAL AREAS; ONLY MINOR ADJUSTMENTS SHOULD BE MADE TO MAKE-READY PROCESSES.

With nearly ninety comments filed, the Commission's *Notice* shows pole attachment issues to be nearly as contentious in 2017 as they were when Congress first debated these issues in 1977. Although several commenting parties find sole support in Congressional testimony from 1977 in opposing some Commission action now, the Commission should make no mistake: this is not 1977.

• In urban areas over the last forty years, numerous market entrants have deployed extensive competitive telephone, television, and Internet services. The pole attachment debate in these areas no longer relates to spurring competition, which readily exists, but to whether and

[1] *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84, 32 FCC Rcd 3266 (2017) (*Notice*). These comments are filed by, and on behalf of, CenturyLink, Inc. and its subsidiaries.

how to give expedited access to the latest wave of market entrants. In this area, the Commission should move cautiously and decline to upset workable, safe processes in favor of unworkable and unsafe alternative processes introduced in the name of expedience.

• In rural areas, electric cooperatives and public utility districts, which seemed in 1977 willing to stand as partners in the deployment of cable television and telecommunications services, now serve as major impediments to deployment of advanced telecommunications services. Increased attachment rates and skyrocketing pole replacement costs, when coupled with new competition in these markets by the very entities holding the vast majority of the essential facilities necessary to deploy advanced telecommunications, demand strong Commission action, as discussed next.

A. Rural Access To Affordable Advanced Telecommunications Services Should Be The Commission's Paramount Concern.

With nearly 20 percent of rural Americans lacking meaningful access to the Internet, and with a vast majority lacking high-speed services,[2] the Commission's focus should remain on efforts to expand advanced telecommunications service in these communities. Although the Commission is making great strides with its Connect America Fund II (CAF II) and similar programs, efforts by companies like CenturyLink to close the Digital Divide are sometimes weakened at the local level by public power providers whose utility poles are a necessary bottleneck to deployment of high-speed services in rural areas throughout the United States.[3]

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[2] *See Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 705 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act,* GN Docket No. 15-191, 2016 Broadband Progress Report, 31 FCC Rcd 699 (2016).

[3] The American Public Power Association notes that its members serve over 49 million Americans, with most (70%) in communities with fewer than 10,000 residents. *See* Comments of the American Public Power Association at 4 (filed June 15, 2017) (APPA Comments).

When Congress sought to address pole attachment access in the mid-1970s, it recognized that utility poles were essential facilities to cable television providers' deployment of nascent community antenna television. Cable operators largely were local companies then, and were not in competition with the local phone or power companies. In considering whether to directly regulate access to electric and municipal power company poles, some members of Congress argued that local power companies would have no reason to charge monopoly rents because their decision-making process was inherently local and "based upon constituent needs and interests."[4] In short, Congress in 1977 expected that no local power provider would price gouge a local cable television or communications provider because the parties' customers were essentially the same local citizens and none of the companies (power, cable, telephone) were in competition with one another. Much has changed since 1977.

1. Changing Market Conditions.

As telephone and cable companies have become less local, the local spirit espoused in the 1977 debate of the Pole Attachments Act[5] has all but disappeared. Public power authorities now own the vast majority of poles and use that leverage to demand monopoly rents and unfavorable terms and conditions of attachment. Further, these same companies now are entering the advanced services marketplace to compete directly with the same entities whose network deployments they control.

a. Public Power Pole Ownership Is Increasing And Joint Use Is Ending.

Over the last forty years, public power entities have increased their pole ownership percentages through a variety of tactics. For example, when new neighborhoods are built, public

[4] *See* Comments of the National Rural Electric Cooperative Association at 4 (filed June 15, 2017), citing S. Rep. No. 95-580, at 18 (1977).

[5] 47 U.S.C. § 224.

power companies move in first to place poles and immediately claim those poles for their inventory (and are not willing to sell them). In other instances, public power companies replace CenturyLink poles (often without notice) to accommodate new power attachments or during storm restoration, and claim ownership of the new poles. Further, municipal power companies often place new, taller poles on the opposite side of the road, and then use their control over the public rights-of-way to force relocation from CenturyLink-owned poles to the new poles owned by the power company.

As CenturyLink's number of poles owned in areas shared with municipal and rural electric companies continues to erode, public power companies increasingly are cancelling joint use agreements. Typically, termination notices are coupled with demands that attachments be removed unless CenturyLink enters into a new license agreement at higher rates. Contrary to the American Public Power Association's (APPA) claim that "the traditional pole attachment negotiation process between public power utilities and the private sector is working,"[6] negotiation often is non-existent. As Vigilante Electric Cooperative informed CenturyLink last month in declining to review *any* redlines to its agreement:

> You have submitted a red-lined revised agreement. We have standard language used throughout the country in our other joint use agreements with the other entities attaching to our poles. We intend to use that standard language.

b. Rents Are High, And Rising.

Congressional testimony in 1977 included a claim that "cooperative utilities charge the lowest pole rates to CATV pole users."[7] If that was true in 1977, it is not the experience of CenturyLink today.

[6] *See* APPA Comments at 18.

[7] *See id*. at 11, citing S. Rep. No. 95-580, at 17-18 (1977).

CenturyLink pays a wide range of pole rental rates to public power authorities. CenturyLink pays rates as high as $60 per pole. The APPA has been central in this effort. In addition to crafting a one-sided agreement template for its membership to demand of attaching entities, APPA also has pushed rates from a formula it has contrived that typically results in rental rates that are over triple the FCC's cable rate. Similarly, the new rate created by the Tennessee Valley Authority (TVA) for the public power providers that take electricity from it seeks to increase the cost to attaching entities at least four-fold.[8]

Notably, and as discussed below, an attaching entity has no recourse to challenge these rates and other terms in these contracts because public power companies generally are not regulated at the state or local level. One-sided, nonnegotiable agreements may be "working" for APPA members, but they are not working for providers of advanced telecommunications or consumers of those services.

c. Other Costs Are Rising Exponentially.

Pole license rates only tell part of the story with regard to how public power providers make an attaching entity's cost of providing service in their territories prohibitively expensive. Electric cooperatives, public utility districts and municipal utilities are relying more today than ever before on expensive audit and attachment correction programs to rebuild their plant at the cost of attaching entities. Contrary to the APPA's claim that "utilities do not seek to impose unnecessary costs on communications providers by making them constantly install new larger poles," (APPA Comments at 27), this is a recurring and widespread practice.

[8] *See* Comments of the Concerned Coalition of Utilities at 40 (filed June 15, 2017) (Coalition Comments) (TVA's formula "allows electric utility pole owners to recover more than 28% of their annual costs of owning and operating their pole distribution system, which is considerably more than the 7.4% recoverable under the FCC's Cable rate.").

For example, in New Mexico, a cooperative utility terminated CenturyLink's joint use agreement and demanded a new pole license agreement. A hallmark of the new contract is an upfront total system audit—substantially at CenturyLink's cost. One of the apparent intended outcomes of the audit is to require existing and longstanding attachments made at aboveground level heights consistent with prior versions of the National Electrical Safety Code (NESC) to be raised to current, higher NESC requirements. In this rural territory, where many of the attachments run along stretches of empty land, moving the lines to the new height will require the same for all new poles along the route. These attachments, and the poles supporting them, have been in place for decades. In the normal course of events, the electric pole owner should replace these poles due to their age and condition. Instead, they appear poised to demand replacement by CenturyLink at a cost of millions of dollars in order to remedy a condition that is not a safety issue, and that is specifically allowed by the grandfathering rules of the NESC. The result would be the cooperative inheriting a windfall of all new poles for tens of miles—at the sole cost of CenturyLink.

d. Public Power Providers Now Compete In The Telecommunications Market.

High rates and difficult contract terms are concerning to all attaching entities, including CenturyLink. The Commission must be mindful, however, that many of these same public power entities now stand as direct competitors in the advanced telecommunications market. The National Rural Electric Cooperative Association (NREC) states in its comments that its members are investing in and constructing "modern broadband networks . . . individually, in consortiums with other cooperatives, or in joint ventures with other service providers." (NREC at 2).

Competition from rural electric cooperatives, as well as municipal utilities, was not an issue in 1977, but it is now. Contract provisions now often allow the pole owner to force its way

onto other areas of the pole—demanding relocation at the attaching entity's sole cost—thereby shifting cost from the cooperative's telecom startup to its direct competitor. CenturyLink is further aware of public utility districts in the State of Washington that are deploying competitive services *in the worker safety space* because they do not want to spend the time or money to increase the size of the pole—in clear contravention of safety codes. Similarly, when taller poles are installed (entirely, or primarily) at CenturyLink's cost as a result of corrective demands from an audit, for example, room is made on such poles for the cooperative's telecom affiliate or partner. Further, unless state law requires limits on cross-subsidization and discrimination, these entities are able to offer their affiliates more affordable access rates, more reasonable terms, and may even loan money collected from power customers for the new telecom entity to deploy services.

2. Little State Or Local Regulatory Oversight Exists for Public Power Providers.

All of this is occurring throughout the nation with little to no regulation or oversight at the state or local level. Although the APPA claims that their members are subject to "pole attachment regulatory processes at the local or state level,"[9] it fails to cite to any such laws. In fact, few such laws exist, and laws that are in place often address only one type of pole owner, and require expensive and time consuming enforcement in state courts.

In Missouri, for example, state law now requires municipal electric utility pole attachment rates and terms to be reasonable.[10] The Missouri Public Service Commission has no oversight over such issues, however, so any challenge requires costly and time-consuming

[9] APPA Comments at 10.

[10] Mo. Rev. Stat. § 67.5014.2 (2016).

litigation in a state court.[11] Missouri law also does not apply to electric cooperatives, which are more widespread in the state. By contrast, Virginia regulates cooperatives, but not municipal utilities.[12]

3. Increased Pole Attachment Costs Relate Directly To Deployment.

The APPA makes the startling claim that "there is no reason to believe that lowering costs would lead to more deployment or that lower costs would be passed through to consumers. Indeed, it is more likely that providers will simply keep their savings."[13]

As an initial matter, the APPA's claim is illogical. Providing service to rural customers requires more poles-per-home-passed than in urban and suburban areas. Pole attachment fees, therefore, can be one of the largest costs in reaching rural customers and the key component in determining where and how far advanced services can be deployed.

CenturyLink's experience further refutes APPA's claim. CenturyLink is a recipient of CAF II funding in over thirty states. CenturyLink has been required to shift funds from one region to another due either to increased pole attachment or right-of-way costs. In Arkansas, costs from one cooperative are so high that CenturyLink is considering a buried solution to avoid attaching to the cooperative's poles in order to meet CAF II timing obligations in the state. Buried deployments, however, typically cost ten times the amount of an aerial deployment. As a result, CenturyLink's CAF II funding would be exhausted in a smaller geographic deployment that covers fewer consumers.

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[11] *Id.* at § 67.5014.5.

[12] Va. Code Ann. § 56-585.3 (2007).

[13] APPA Comments at 25.

4. Need For Commission Action Is Clear.

With the exception of public power providers themselves, commenting parties in this proceeding agree that electric cooperatives, municipal utilities, and public power districts stand as the most concerning impediment to expanded fiber deployments in rural America. Despite claims from NREC that "there is no legal or policy rationale to support the Commission regulation over attachments to electric cooperative poles,"[14] and a similar protest by the APPA that "there is simply no legal or credible factual basis for the Commission to impose a federal solution to solve a problem that does not exist,"[15] the record before the Commission amply supports a very strong policy rationale for action on reducing pole attachment costs in rural areas. The Commission's legal basis is similarly apparent.

a. Section 253.

Section 253 of the Communications Act, 47 U.S.C. § 253, permits the Commission to eliminate barriers to entry in the telecommunications market created by local and state governments. The Commission has long-known that municipal utilities are within its pole attachment regulatory oversight, stating in 1999 that it would review issues as they arise:

> [T]he Commission concluded that its rules would prevail where a local requirement directly conflicts with a rule or guideline adopted by the Commission. The Commission further noted that, although state and local governments have general authority to regulate in the area of pole attachments, section 253 invalidates all state or local legal requirements that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate [or] intrastate telecommunications service."[16]

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[14] NREC Comments at 5.

[15] APPA Comments at 18.

[16] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Reconsideration, 14 FCC Rcd 18049, 18052 n. 20 (1999).

Access to municipal utility poles is required by contract. The legal terms of these contracts create a legal obligation enforced by the locality and are no different than any other law or code subject to Section 253.[17]

Municipal utilities have protested, however, that their provision of electric service is a "proprietary" function beyond the reach of Section 253. This is incorrect for several reasons.

First, in some states the distinction between proprietary and government function has been eliminated. As noted by the Oregon Supreme Court in *Northwest Natural Gas Co. v. Portland*,[18] for example, the removal of the distinction arises from the fact that the citizenry elected their officials to run the locality, including by entering into certain fields such as the provision of electricity. With city employees employed in these functions, several states no longer find a discernible difference between governmental and proprietary functions.[19]

Second, the claim that municipal utilities are proprietary in nature is directly at odds with recent pole attachment contracts CenturyLink has entered into with municipal utilities. For example, municipal utilities refuse indemnification language because of their status as governmental entities that are unable to agree to unfunded future obligations in a contract.

Third, municipal utilities typically require blanket provisions in their contracts that they are governmental entities subject to sovereign immunity. For example, in a recent pole agreement from the Cody, Wyoming:

> By entering into this agreement, the City of Cody, as a governmental entity, does not waive its sovereign or governmental immunity, and nothing in this agreement shall be construed as a waiver of the immunities, rights, defenses or limitations provided by the Wyoming Constitution or Wyoming law, and the City of Cody

[17] *See also* Comments of Crown Castle International Corp. at 28-30 (June 15, 2017) (Crown Castle Comments).

[18] 300 Or. 291 (1985). *See also Helvering v. Gerhardt*, 304 U.S. 405 (1937), cited therein.

[19] *Id.*

> specifically reserves the right to assert such immunities, rights, defenses and limitations as a defense to any action arising out of this agreement.

Similarly, Murray City, Utah, required this provision in a joint use agreement:

> GOVERNMENTAL IMMUNITY. The City is a governmental entity subject to the provisions of the Governmental Immunity Act of Utah. Execution of this Agreement shall not constitute a waiver of any defense or limitation of liability under the Act by the City.

Municipal utilities and other publicly-created utilities should not be permitted to claim the benefits of being a governmental entity (like avoiding indemnification and claiming immunity) without also agreeing to their obligations of being governmental entities, including compliance with federal laws like Section 253.

Fourth, many municipal utilities continue to wield their governmental and electric power company functions together. In Butler, Missouri, for example, where CenturyLink is involved in municipal right-of-way fee litigation, the city will not enter into negotiation of a new pole attachment agreement and will not issue permits related to pole attachments except in the case of emergency (when a permit is granted after the fact). Centralia, Washington, cancelled the parties' joint use agreement, then declined to issue permits to attach to new poles that were requested during the contract term, but not reviewed until after the date of termination. For two years, while the parties worked on two license agreements (to cover each party's attachments to the other pole owner's poles, instead of a single joint use agreement as had existed for decades and as CenturyLink offered for negotiation) the city continued to refuse to permit those pole applications; declined CenturyLink's right to place new poles via right-of-way permits, and even refused to act on right-of-way permits to place buried lines—all to create leverage for entry into its one-sided license agreement.

b. CAF II, Reciprocal CLEC Rules.

Section 253 will not reach some power providers that are not instruments of the state or a locality. CenturyLink suggested in its initial comments two solutions to this concern:

First, the Commission should consider what levers it has under CAF II and similar grants. NREC notes in its initial comments that its members have sought rights to participate in the CAF II reverse auction.[20] At the least, if the Commission allows these entities to enter CAF II and similar auctions, it must demand that such entities abide the Commission's pole attachment regulations. These entities should not benefit from the program themselves, while confounding deployment by others.

Second, CenturyLink also has suggested that the Commission close the competitive gap between ILECs and CLECs when it comes to sharing last mile facilities. Here, too, the Commission could require that municipal and cooperative utilities that enter into telecommunications fields (directly, or via a partnership) be subject to the Commission's rules, including a requirement to provide just and reasonable terms for access by their competitors—and to be subject to complaint before the Commission where they fail to do so.

B. Urban and Suburban Markets Are Competitive And Require Little Process Change.

The pole attachment story is markedly different in urban and suburban areas. Competition is robust. Access to investor-owned utility and ILEC infrastructure for cable operators has been required since 1978, and access to competitive telecommunications providers has been provided since 1996. In one of CenturyLink's major markets, Denver, CenturyLink gives access to conduit and poles to at least seven different competitors.

[20] NREC at 3.

CenturyLink has been able to accommodate these many attachment requests per the Commission's standard timelines. CenturyLink has received no Commission pole attachment complaints since the 11-50 Order,[21] and has been able to resolve virtually all disputes in the field.

In short, the existing processes are working in urban and suburban locations. This is not simply CenturyLink's experience, but also that of CenturyLink's competitors. Crown Castle, for example, which started in 1994, now has over one million attachments to utility poles.[22] Lightower Fiber Networks, a company begun only 17 years ago, has deployed 30,000 route miles of facilities, and is expanding at a rate of 2,000 miles per year.[23] CenturyLink maintains contracts and relationships with these companies and hundreds more.

1. One Touch Make Ready (OTMR) Is Not Needed And Raises Too Many Irresolvable Legal Issues.

The proponents of OTMR fall into two primary categories: investor-owned utilities (IOUs) and new market entrants. CenturyLink discusses their positions in turn.

a. Investor Owned Utilities.

Some IOUs accept the prospect of OTMR, so long as their facilities are not involved.[24] They seek to have their own facilities excluded, not only on their poles, but also on poles owned by ILECs.[25] This position is untenable for several reasons.

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[21] *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*; WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011).

[22] *See* Crown Castle Comments at 2, 23.

[23] Comments of Lightower Fiber Networks at 1 (filed June 15, 2017).

[24] *See* Coalition Comments at 17 ("one touch make-ready work must be limited to moving communications company facilities"). *See also* Comments of Ameren et al. at 9 (filed June 15, 2017) (Ameren Comments) ("[t]here are no circumstances under which a one-touch make ready or self-help remedy is appropriate above the communications space." (emphasis removed)).

[25] *See id.* ("This principle should apply with equal force on poles owned by both electrical utilities and ILECs.").

First, IOUs have contractual commitments with ILECs to not allow third parties to adjust ILEC or IOU facilities. Permitting another entity to move CenturyLink's property would be a breach of these agreements by the IOU no less than if CenturyLink allowed such a party to move power facilities (which the IOUs already oppose).

Second, some of CenturyLink's agreements dedicate specific amounts of space on a pole to the electric company and to CenturyLink. The space often increases as the pole size increases. The parties compensate one another for this benefit, but nothing permits the other to allow encroachments in that space by either of the parties to the contract, or by third parties. Allowing a third party to encroach in this dedicated space is a breach of contract.

Third, in some territories, work on CenturyLink (and IOU) poles and/or lines must be performed by union linemen licensed or registered by the State. Permitting such work to be undertaken to move these facilities may be a violation of collective bargaining agreements and state law.

Fourth, and beyond contractual issues, OTMR raises the very real specter of litigation between attaching entities. Even if an IOU has sufficient indemnification as between itself and every attacher on its pole, such indemnity does not exist for the ILEC vis-à-vis those companies. Indemnification also will not exist on an ILEC pole for the IOU vis-à-vis those third parties. This scenario complicates how an attaching entity like CenturyLink, with no contract with another communications company, is to resolve harm to CenturyLink lines or workers. Likely, CenturyLink's only remedy would be litigation against the IOU for breach or the attacher or its contractor in tort.

The IOUs' position to absolve themselves of the OTMR process is unrealistic and unworkable. OTMR directly implicates IOU contracts with ILECs; it affects union relationships; it raises a heightened concern of safety issues on ILEC and IOU poles; and it raises a host of contract and tort liability concerns that leaves every party subject to litigation.

b. New Market Entrants.

The desire for affordable and quick access to pole attachments is universal. Even electric utilities prefer to minimize cost and to install and repair service as quickly as possible. The Commission has worked for decades to improve processes for access, moving from a reasonableness standard for make-ready timelines, for example, to specific, expedited timeframes. As noted above, the Commission's rules, rulemakings, and adjudicated orders have given a workable framework for pole attachment processes that strikes a fair balance between expediency and cost on one side, and safety and reliability on the other.

Google Fiber, however, discounts the latter, claiming that "existing attachers have no reasonable investment-backed expectation that their networks will never experience disruptions."[26] Although CenturyLink's shareholders may quibble with that claim, state regulators and the Commission itself surely will reject it. CenturyLink is one of the nation's largest providers of 911 service. CenturyLink's goal is to avoid all disruptions in service. In fact, CenturyLink has statutory, tariff-based, and contractual obligations to public safety agencies, regulators, and its customers (including federal, state and local governments) to provide and maintain reliable service.

Network deployment, therefore, is not where corners should be cut. To be clear, despite the allegations leveled by Google Fiber and others, make-ready is not a scheme determined to

[26] Comments of Google Fiber, Inc. (filed June 15, 2017), at 15.

undermine or slow competition. Make-ready is a necessarily-deliberate process that ensures pole infrastructure is capable of supporting safely the many demands now placed upon it.

CenturyLink agrees with the concerns expressed by Charter Communications regarding OTMR, including especially the various liability concerns that echo CenturyLink's comments. No commenting party has resolved OTMR's legal issues and, absent cross-contracts between every attaching entity and pole owners in a market, they cannot be readily resolved. OTMR, therefore, should not be considered further by the Commission.

2. The Commission Can Take Three Meaningful Steps To Improve The Pole Attachment Process.

Even without OTMR, the FCC can take three meaningful steps to resolve most issues in this area.

First, the Commission should implement a 180-day shot-clock for resolving all forms of pole attachment complaints. This proposal received wide support. An expedited process will allow the types of access issues complained of by Google Fiber and others to be adjudicated quickly. Faster resolution of complaints also will serve to clarify via order issues that arise on a case-by-case basis that are difficult (or inadvisable) to reduce to regulation. CenturyLink suggested the 180-day timeframe begin after the three-part pleading cycle is complete. CenturyLink also suggested a maximum time of one year to adjudicate complaints directed to an administrative law judge.

Second, the Commission can find ways to streamline the make-ready process. To this end, CenturyLink suggested that the Commission consolidate the survey and estimate stages into a single 45-day period. CenturyLink also suggested that the Commission could adopt certain best practices, including ones CenturyLink uses to spur make-ready timelines by allowing attaching entities to engage outside contractors at the outset of the process. Not every solution

will work for every pole owner (due to labor agreements, internal standards, etc.), however, so the Commission should tread carefully in this area by supporting practices and not mandating more rules. Alternatively, and consistent with the Commission's intent to implement a regulatory reform agenda guided by the principles of Executive Order 13771,[27] the Commission could remove regulations requiring continuing access to ILEC facilities by competitors, all of whom are fully capable of deploying facilities.

Third, the Commission should further drive uniformity in its regulations by allowing ILECs similar treatment vis-à-vis IOUs and CLECs in the pole attachment process. Where ILECs are parties to standard license agreements, they should not pay more for the same access as their CLEC and cable competitors. Similarly, where last mile facilities of an ILEC must be shared with competitors, those competitors should be required to provide reciprocal access rights.

II. THE PROPOSED STREAMLINING OF THE COPPER RETIREMENT AND NETWORK CHANGE NOTIFICATION PROCESSES WILL ACCELERATE FIBER DEPLOYMENT.

Over the past two decades, ILECs have extended fiber closer to their customers, in order to provide faster, more capable next-generation services. In more recent years, as part of this natural progression, a slow but growing portion of customers can now be served over all-fiber last-mile facilities. The benefits of this migration include higher bit rates, better performance in inclement weather, and fewer repairs.[28] The deployment of fiber also eliminates the need for the ILEC to maintain redundant copper facilities, resulting in savings that Corning estimates as $45 to $50 per home passed per year, which can be a key driver in the business case justifying the

[27] Fed. Reg. Vol. 82, No. 22 (Feb. 3. 2017).

[28] *See* Comments of Verizon at 16-17 (filed June 15, 2017) (Verizon Comments).

fiber deployment itself.[29] But these cost savings depend on an expeditious process for retiring obsolescent copper facilities.

In the opening round of comments, CenturyLink and other commenters showed that the *2015 Technology Transition Order* marked a step backward in terms of facilitating fiber deployment. The Commission therefore should return to its pre-2015 copper retirement process, with certain additional changes, and adopt other reforms proposed in the *Notice*, including the elimination of 47 U.S.C. § 51.325(c). Those objecting to this streamlining fail to raise any compelling reason to remove these impediments to fiber deployment and the provision of next-generation services, and particularly fail to show that the more burdensome regulations adopted in the *2015 Technology Transition Order* meaningfully serve the public interest.[30]

A. The Commission Should Repeal Section 51.332.

The Commission can most simply streamline its copper retirement process by repealing the new regulatory requirements promulgated in Section 51.332. Those requirements incorporate a doubled notice period of 180 days; a definition of copper retirement that includes the feeder portion of copper loops and subloops and "*de facto*" retirement; required notice to all entities that directly interconnect with the ILEC's network in the affected service area, as well as the Secretary of Defense, state public utility commission (PUC), governor, and Tribal entities in

[29] Comments of Corning, Inc. at 31 (filed June 15, 2017). Such cost savings include the elimination of unnecessary billing systems, IT resources, trouble ticketing systems, and other dedicated on-staff engineering resources. *Id.* at 31-32. See also Fiber Broadband Association Comments at 10 (filed June 15, 2017)(noting burdens of maintaining copper).

[30] *Technology Transitions; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, FCC 15-97, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking at ¶ 28 (rel. Aug. 7, 2015) (*2015 Technology Transition Order*).

that area; and specified notice to retail customers.[31] The record shows that these requirements are both burdensome and unjustified.

Notice Period. The 180-day notice period in Section 51.332 directly conflicts with the typical timeline for planning and deploying fiber facilities, whether triggered by third party activity, such as road projects, or initiated by the ILEC itself.[32] The Commission therefore should return to the 90-day notice period for standard copper retirements, adopt an expedited timeframe for unused copper facilities,[33] and allow a flexible timeframe for copper retirements initiated by a third party.[34] The notice period should run from the date of filing, rather than the date the Commission issues the public notice associated with the retirement, and need not include a formal objection process.[35]

Definition of Copper Retirement. The Commission should abandon the broadened definition of copper retirement adopted in the *2015 Technology Transition Order*. In particular, application of the copper retirement rules to copper feeder could delay Connect America Fund deployments, which frequently require CAF recipients to upgrade feeder facilities to fiber. At a minimum, the Commission should eliminate or expedite the copper retirement process for feeder facilities that are not used by another telephone exchange service provider.

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[31] *See* 47 C.F.R. § 51.332.

[32] CenturyLink Comments at 28-29 (filed June 15, 2017).

[33] *See* Comments of the California Public Utilities Commission at 29 (filed June 15, 2017) (California PUC Comments).

[34] *See* Comments of AT&T Services, Inc. at 38-39 (AT&T Comments).

[35] CenturyLink Comments at 29.

Notice Recipients. The Commission should limit direct notice to telephone exchange service providers that directly interconnect with the ILEC's network.[36] CenturyLink does not object to providing direct notice to PUCs in the states affected by a copper retirement, but the Commission should eliminate the requirement to provide such notice to the Secretary of Defense, governors, and Tribal entities, which do not have a significant interest in individual copper retirements, as reflected in the fact that none of them commented on the *Notice*'s proposals to reduce these notice requirements.

Notice to Retail Customers. The Commission should eliminate notice of copper retirement to retail customers. As explained by Verizon, the retail notification mandated in the *2015 Technology Transition Order* is confusing to retail customers, who are much more interested in the date on which they are migrating to fiber facilities than that on which their provider is authorized to retire the copper.[37] To the extent the Commission retains an obligation for retail notice of copper retirements, it should significantly streamline that requirement.[38]

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[36] Windstream Services LLC Comments at 9-10 (filed June 15, 2017). The Commission should not adopt Windstream's request to retain a "good faith communication" requirement. Windstream Comments at 8-9. When retiring copper facilities, CenturyLink provides to each CLEC a list of their circuits affected by a copper retirement. CenturyLink also maintains a website identifying its wholesale services available to CLECs. Using these resources, the CLEC is in the best position to identify the wholesale services that best fit its needs, though CenturyLink will work with its CLEC customers to make the migration from retired copper facilities as seamless as possible.

[37] Verizon Comments at 21-22.

[38] *See* Comments of ITTA - The Voice of America's Broadband Providers at 10-12 (filed June 15, 2017). Certain parties, such as the Edison Electric Institute, appear to confuse the copper retirement and Section 214 discontinuance processes. *See* Comments of the Electric Edison Institute at 47 (filed June 15, 2017). Regardless of whether the Commission eliminates the requirement to notify retail customers of copper retirements, retail customers will continue to receive notice of any telecommunications service to which they subscribe.

B. The Commission Should Eliminate Section 51.325(c).

As discussed by CenturyLink and other commenters, the Commission should adopt the *Notice*'s proposal to eliminate the information sharing prohibitions in Section 51.325(c). This anachronistic provision constrains the reasonable flow of information necessary for network planning and deployment. While the California PUC suggests that such information sharing among ILEC affiliates could disadvantage competitors,[39] the Commission decided long ago that the burdens of maintaining separate affiliates and complying with the separation requirements in Section 272 far exceeded any benefit from such requirements.[40] Thus it makes no sense for the Commission to retain Section 51.325(c)'s information sharing restrictions today, with respect to affiliates or nonaffiliated entities. Moreover, given the Commission's recent finding that ILEC BDS prices are generally constrained by competition,[41] there is no justification for continuing to enforce this ILEC-specific regulatory restriction.

III. THE COMMISSION SHOULD STREAMLINE AND RETURN THE SECTION 214 DISCONTINUANCE PROCESS TO ITS ORIGINAL PURPOSE.

As the Commission well knows, most customers have already migrated away from legacy services, such as TDM voice and DS1 services. In fact, two thirds of American households are wireless-only or wireless-mostly,[42] and the number of DS1 circuits provided by

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[39] California PUC at 27-28.

[40] *See, e.g., In the Matters of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Forbearance Under47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services,* Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007).

[41] *Business Data Services in an Internet Protocol Environment; Technology Transitions; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, FCC 17-43, Report and Order at ¶¶ 83-85 (2017) (*BDS Order*).

[42] Verizon Comments at 34.

CenturyLink and other ILECs has fallen precipitously over the past several years. These customers have migrated to next-generation wireline and wireless services that are now nearly ubiquitous.[43] On the business side, the Commission recently concluded that "the market for business data services is dynamic, with a large number of firms building fiber and competing for this business."[44]

Given these trends, the Commission should return the Section 214 process to its original purpose of ensuring that communities are not left without service, rather than attempting to dictate the terms of technological innovation.[45] Thus, a carrier's discontinuance of a particular service should not trigger a need for Commission approval as long as the community has access to a comparable alternative service, regardless of the provider or facilities used to furnish that alternative service.[46] In such circumstances, the Commission should require, at most, a notice filing confirming that the provider has properly notified affected customers of the discontinuance and availability of alternative services.

If the Commission concludes that a formal Section 214 application is necessary, it should establish a streamlined auto-grant process for the discontinuance of legacy services and adopt the *Notice*'s other streamlining proposals. Finally, the Commission should abandon the "functional test" standard for determining when a Section 214 application is necessary.

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[43] As Verizon notes, mobile wireless network coverage extends to 99.9 percent of the country, and more than 92 percent of Americans have access to 25/3 Mbps fixed broadband over which they can receive VoIP services. Verizon Comments at 34-35.

[44] *BDS Order* at ¶ 2. In the *BDS Order*, the Commission concluded that a cable company is an effective competitor for business data services at any location served by its near-ubiquitous hybrid fiber coax network or fiber facilities. *Id.* at ¶ 119.

[45] *See* Verizon Comments at 30-33.

[46] Verizon Comments at 39.

A. The Commission Should Establish Streamlined Procedures For Applications To Discontinue Legacy Services.

In its opening comments, CenturyLink proposed that the Commission adopt streamlined procedures for applications to discontinue legacy services. Applications to discontinue TDM voice service would be subject to a streamlined process if the carrier seeking to discontinue that service certifies that all its affected retail customers have access to a comparable service that has been adopted by a substantial portion of the public (*i.e.*, facilities-based or over-the-top interconnected VoIP, circuit-switched cable, 3G or 4G wireless, or TDM voice service), regardless of the provider of that alternative service.[47] AT&T proposed a similar procedure, subject to a 10-day comment period and 25-day automatic grant period.[48] These proposals properly account for the fact that no detailed analysis or factual showing is necessary to conclude that consumers view fixed and mobile voice services, including VoIP services, to be adequate substitutes for TDM voice services.[49] As long as affected customers are given appropriate notice and have access to a comparable alternative service, no further Commission oversight is necessary.[50]

CenturyLink proposed similar discontinuance procedures for TDM business data services (which should apply to other data services as well). Specifically, an application to discontinue one of these services would be eligible for streamlined processing if the applicant certifies that it

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[47] CenturyLink Comments at 43-44.

[48] AT&T Comments at 42-43.

[49] NASUCA's claim that mobile voice service is not a viable alternative to TDM service obviously is belied by the fact that the majority of American households now rely exclusively on wireless service. *See* Comments of The National Association of State Utility Consumer Advocates at 22 (filed June 15, 2017).

[50] And, conversely, if the Commission concludes that the public interest requires that one or more of these alternative services provide a capability currently limited to TDM voice service, the Commission should use its rulemaking procedures—and not the Section 214 process—to adopt that requirement for all providers.

has notified the affected customers of the proposed discontinuance and that those customers have access to another TDM or packet-based business data service of similar speed, either from the discontinuing carrier or another provider.[51] Given that the Commission "has long considered TDM and packet-based business data services as functionally interchangeable at comparable capacities,"[52] such streamlined processing will further the public interest. AT&T's proposal to provide 180-day customer notice before filing a petition to discontinue one of these services will provide affected customers ample time to accommodate this change.[53]

B. The Commission Should Adopt Its Other Proposals To Streamline The Section 214 Discontinuance Process.

The Commission should implement the *Notice*'s other proposals to streamline the Section 214 process and thereby expedite the migration to next-generation services.

"Grandfathered" Services. When grandfathering a service, a carrier allows existing customers to maintain that service, while declining to take orders from new customers. Grandfathering thus has less impact on customers and therefore warrants shorter comment and automatic-grant periods.[54] The Commission should apply these shortened timeframes to applications to grandfather any service, rather than just "low speed" data services. As noted by Corning, these proposals will drive efficiency and investment.[55]

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[51] CenturyLink Comments at 44.

[52] *BDS Order* at ¶ 26.

[53] *See* AT&T Comments at 46.

[54] The shortened timeframes in the *Notice* would not allow carriers to "quickly" discontinue vital services, as suggested by the California PUC, as a carrier would have to grandfather a service for at least 180 days before obtaining streamlined processing to discontinue that service. *See* California PUC Comments at 36. *See* also Notice at ¶ 85.

[55] Corning Comments at 4.

Services with No Customers. For a service with no customers, a discontinuing carrier should be required simply to notify the Commission that it has discontinued the service, without a need for prior Commission approval.

Carrier Services. The Commission should reverse its conclusion in the *2015 Technology Transition Order* that a carrier seeking to discontinue a service must consider the impact of that discontinuance on the end users of its carrier-customers.[56] That conclusion was inconsistent with the statute and Commission precedent, places unreasonable burdens on discontinuing carriers, and delays the introduction of next-generation services.[57]

Government Customers. No special discontinuance rules or timelines are necessary for government customers. ILECs and other carriers have a long history of working cooperatively with government users and possess obvious incentives to avoid disrupting service to these important customers. Moreover, such customers frequently negotiate contractual provisions that require lengthy notice periods before discontinuing the services they buy via that contract. For example, CenturyLink's standard agreements with the federal government require CenturyLink to provide 18 months' notice prior to discontinuing a service covered by that agreement, and/or to deliver an alternative product equivalent to the service being discontinued. CenturyLink stands ready to work closely with its government customers toward the common goal of migrating to next-generation services in an efficient and deliberate manner.

C. The Commission Should Abandon The "Functional Test" Standard.

The Commission should issue a declaratory ruling reversing the "functional test" standard for determining when Section 214(a) applies. As articulated, this standard conflicts

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[56] *2015 Technology Transition Order* at ¶ 115.

[57] CenturyLink Comments at 47-48; AT&T Comments at 53-60; Comments of the USTelecom Association at 36-37 (filed June 15, 2017).

with the text of the statute,[58] as well as common sense. The contours of a service are naturally defined by the terms of the tariff or contract by which the carrier offers that service, and the carrier has no way of knowing how customers use that service beyond those terms.

The vagueness of the functional test has created both uncertainty and a drag on the migration to next-generation services. Any transition to a new technology involves minor inconvenience and disruption to users accustomed to the legacy technology or service. To the extent the Commission is concerned about the impact of the IP migration on particular groups of customers, it should address the needs of such customers through rules applicable to all providers.[59]

Respectfully submitted,

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July 17, 2017

[58] AT&T Comments at 61-64.

[59] CenturyLink Comments at 47.